



**DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING
ENFORCEMENT DIVISION
*DIRECTIVE***

**DIRECTIVE
NUMBER
403**

**DISTRIBUTION
DATE
October 1, 1998**

1. **SUBJECT: MONITORING OF SETTLEMENT AGREEMENTS**
2. **PURPOSE:** To set forth the procedures for monitoring settlement agreements.
3. **BACKGROUND:** California Government Code section 12964 requires that compliance reviews be conducted within one year of their effective date to determine whether the terms of settlement agreements have been fully obeyed and implemented.
4. **PROCEDURES:**

A. Agreements Not To Be Monitored:

- 1) It is not necessary to monitor a settlement agreement when all of the terms of the agreement have been fulfilled at the time the case is closed (e.g., agreement states only that complainant will receive \$500 and complainant has received check).
 - a) The Consultant or assigned attorney is responsible for verifying that the terms of such agreements have been met.
 - b) Verification that the terms have been met will be noted on the Case Diary and confirmed by case notes, copies of checks, receipts for checks, etc., in the file.
- 2) If an agreement has both immediate relief and prospective or affirmative relief, fulfillment of the immediate relief provision(s) will be verified by the Consultant or assigned attorney prior to closure of the case and its referral for monitoring.

B. Agreements To Be Monitored:

Settlement agreements will be monitored if all the terms have not been fulfilled at the time of the case closure.

- 1) If compliance with a provision can be verified within thirty (30) days of the effective date of an agreement, such compliance will be verified by the Consultant or assigned attorney before the case is closed.

- * Exceptions to this requirement are permitted only when pre-closure verification would result in the case being closed after its anniversary date. Under these circumstances, the case should be closed and referred for monitoring in accordance with C. and D. below.

- 2) Prospective relief, a specific benefit or remedy for the complainant which is to be received more than thirty (30) days following the effective date of the agreement, *must be* monitored.
- 3) Affirmative relief, an action to be taken by the respondent to correct practices or institute procedures, which will occur more than thirty (30) days following the effective date of the agreement, *must be* monitored.

C. Monitoring Instructions:

- 1) It is the responsibility of the District Administrator, with the concurrence of the Regional Administrator, to either monitor cases identified for monitoring or appoint a monitor to verify the respondent's compliance with the settlement agreement.
- 2) The decision as to whether an agreement is to be monitored will be made at the time of case closure by the consultant.
- 3) When it is determined that an agreement is to be monitored, the assigned consultant will:
 - a) complete an EDP Update/Closure Report (DFEH-800-02); and
 - b) identify the monitoring dates.

D. Monitoring Process:

- 1) After the Initial Notice (DFEH-900-01) is sent to the respondent, the case file will be placed with other cases to be monitored. These notices will be filed by the monitor in alphabetical order by complainant name and noted on the Monitoring Log (DFEH-900-06).
- 2) The monitor will pull the case file when the file is ready for active monitoring and note the monitoring activities in the Case Diary and the Monitoring Log.
- 3) Prior to each scheduled monitoring, except in instances where a response has been received, the monitor will pull the file for follow-up contact with

the respondent (by mail or telephone) as a reminder that verification is due. Form letters (DFEH-900-02, DFEH-900-03, and DFEH-900-04) are to be used in monitoring follow-up.

- 4) If a respondent has not complied with the monitoring requirements or settlement provisions, the monitor will confer with the District Administrator as to how to proceed.
- 5) In the event of noncompliance, the District Administrator will refer the case to the Legal Division for enforcement of the settlement agreement (refer to Directive 311, "Referral of Case Files to Legal").
- 6) The monitor may verify appropriate provisions by direct contact with the complainant. Prior to closing a case referred for monitoring, the complainant must be sent a "Monitoring 14-Day Letter" (DFEH-900-05) and be allowed time to respond as to whether he/she believes the terms have been met.

E. Verifying Compliance:

The monitor is expected to exercise good judgment in verifying compliance with the terms of the agreement. Where prospective relief to the complainant is at issue, the best verification will be the complainant. His/her oral verification of compliance with the terms of the settlement agreement will be noted in the case file. The complainant can also be useful in verifying the respondent's compliance with affirmative relief terms, in those instances where the complainant is still employed by the respondent.

Other sources of verification are:

- 1) Copies of policies accompanied by the respondent's statement indicating how they were promulgated.
- 2) On site verification of posting. This shall be done when the complainant is no longer employed and cannot, therefore, provide verification.
- 3) "Testing" the employer by calling for a reference when complainant alleges the employer's commitment to provide a neutral reference has not been honored.
- 4) Spot-checking randomly selected employee records/applications to verify copies provided by the respondent.

F. Completion of Monitoring:

- 1) The monitor will ensure that monitoring was completed and the appropriate code noted in the Case Diary.
- 2) A Monitoring Closure Letter (DFEH-900-07) will be sent to both the complainant and respondent and a copy will be placed in the case file.
- 3) The case file will be filed with the other closed files.

5. **APPROVAL:**

Nancy C. Gutierrez, Director

Date